Mid-Con Cables, Inc. and District No. 174, International Association of Machinists and Aerospace Workers, AFL-CIO, Petitioner. Case 17-RC-9075

June 18, 1981

DECISION AND ORDER REMANDING

The National Labor Relations Board has considered objections to an election held August 29, 1980, 1 and the Hearing Officer's Report recommending disposition of same. The Board has reviewed the record in light of the exceptions and briefs, and hereby adopts the Hearing Officer's findings and recommendations, 2 as modified below.

The Employer has excepted to the Hearing Officer's refusal to permit it to cross-examine the Petitioner's witness, Diana Green. We find merit in the Employer's contention.

The Petitioner called and questioned employee Green. Green testified regarding her activities as an in-plant organizing team member, her attendance at a meeting at the union hall, her knowledge as to any flat tires on employee cars, and her knowledge as to whether union members had bought or offered to buy meals for employees. Green testified at the end of the day's hearing. After eliciting the aforenoted testimony, the Petitioner's counsel stated, "We will have to recall her tomorrow." Thereupon, the Employer's counsel stated, "I will reserve my cross-examination for tomorrow."

On the following day, the Petitioner's counsel decided not to recall Green. At that point, the Employer's counsel requested an opportunity to cross-examine Green.³ The Hearing Officer, apparently concluding that the Employer's counsel intended to question Green on matters going beyond the scope of direct examination, would not permit Green to resume her testimony. The Hearing Officer further rejected the Employer's request to call Green as its own witness.

In regard to representation hearings, the Board's Rules provide that all parties have a right to call, examine, and cross-examine witness.⁴ We agree

with the Employer that it had a right to cross-examine Green.

In presiding over a hearing, a hearing officer has an obligation to inquire fully into matters in issue and to obtain a full and complete record. Certainly, in fulfilling his or her obligations, a hearing officer must also endeavor to preclude the introduction of irrelevant or immaterial evidence. A hearing officer should prevent "fishing expeditions" or other improper examination by the parties. However, where a witness has testified on direct examination, a hearing officer cannot, consistent with the rights of the parties, preclude any and all cross-examination of that witness. It is not within the discretion of a hearing officer to decide, prior to any cross-examination, that such cross-examination of a witness will elicit cumulative or irrelevant evidence or be otherwise improper.

In this case, the Hearing Officer should have permitted the Employer an opportunity to cross-examine Green. If, thereafter, and in accord with the apparent expectations of the Hearing Officer, the Employer engaged in any improper questioning, objections to that questioning would be properly sustained. However, the Hearing Officer was premature and in error in denying the Employer any opportunity whatsoever either to cross-examine Green or to call Green as its own witness.

In these circumstances, we deem it appropriate to remand this case for further proceedings consistent herewith.

ORDER

It is hereby ordered that the hearing in this proceeding be, and it hereby is, reopened for the limited purpose of permitting the Employer an opportunity to cross-examine, or to call as its own witness, employee Diana Green.

IT IS FURTHER ORDERED that this proceeding be, and it hereby is, remanded to the Regional Director for Region 17 for the purpose of conducting such further hearing and issuing a supplemental report thereon, and that the Regional Director be, and he hereby is, authorized to issue notice thereof to all parties.

¹ The election was conducted pursuant to a Stipulation for Certification Upon Consent Election. The tally was: 78 for, and 59 against, the Petitioner; there were 2 challenged ballots, an insufficient number to affect the results.

² In light of our decision that a remand is necessary in this case, we shall not pass at this time on the Hearing Officer's findings and recommendations regarding the objections to the election.

⁹ We reject the Petitioner's contention that the Employer waived its right to cross-examine Green. Under the above-noted circumstances, the Employer's counsel could properly reserve cross-examination based on the Petitioner's representation that Green would be recalled.

^{*} Sec. 102.66(a) of the National Labor Relations Board Rules and Regulations, Series 8, as amended, is as follows:

Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and any party and the hearing officer shall have power to call, examine, and cross-examine witnesses and to introduce into the record documentary and other evidence. Witnesses shall be examined orally under oath. The rules of evidence prevailing in courts of law or equity shall not be controlling. Stipulations of fact may be introduced in evidence with respect to any issue.